

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
STATE OF WISCONSIN,)	
)	
Plaintiff-Intervenor,)	
)	
v.)	Case No. 00-C-409-C
)	
MURPHY OIL USA, INC.,)	
)	
Defendant.)	

CONSENT DECREE

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CONSENT DECREE

WHEREAS, Plaintiff United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“U.S. EPA”), filed a Complaint and an Amended Complaint in this Court against Defendant Murphy Oil USA, Inc. (hereinafter “Defendant” or “Murphy”), for injunctive relief and the assessment of civil penalties for violations of various federal statutes and applicable federal and state regulations implementing those statutes, including the Clean Air Act, as amended, 42 U.S.C. §§ 7401 to 7671q (“CAA”), the Clean Water Act, as amended, 33 U.S.C. §§ 1251 to 1387 (“CWA”), Subchapter III of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6921 to 6939e (“RCRA”), and the Emergency

Planning and Community Right-To-Know Act ("EPCRA"), 42 U.S.C. §§ 11001 to 11050;

WHEREAS, Murphy filed Answers to the original Complaint and to the Amended Complaint contesting the alleged violations and raising several affirmative defenses;

WHEREAS, in its Opinions and Orders issued on May 18, May 24, May 25, June 5, June 6, June 11, and July 31, 2001, as amended, the Court found Murphy liable for the violations set forth in the United States' sixth claim ("LDAR"), seventh, eighth and ninth claims ("CWA-NPDES"), and fourteenth, fifteenth (in part), seventeenth and eighteenth claims ("RCRA"), and dismissed other claims of the United States;

WHEREAS, trial to the Court proceeded on most of the remaining claims and affirmative defenses during June 7-16, 2001, and on August 1, 2001, the Court found Murphy liable for the violations set forth in the United States' first, second and third claims relating to the CAA's Prevention of Significant Deterioration Program, fourth claim relating to the CAA's New Source Performance Standards, tenth, eleventh, twelfth and thirteenth claims relating to the CWA's Spill Prevention Control and Countermeasure requirements, and dismissed the remaining part of the fifteenth claim relating to RCRA;

WHEREAS, Murphy hereby acknowledges the Court's findings of liability for violations of the CAA, CWA, and RCRA, and, while it disputes the Court's findings for a number of legal and factual reasons, in the interests of settlement of the litigation, it relinquishes its right to appeal the Court's Opinions and Orders issued in this case;

WHEREAS, the State of Wisconsin filed a related case in this Court entitled *State of Wisconsin, Dept. of Natural Resources. v. Murphy Oil USA, Inc.*, Case No. 00-C-408-C, which this Court dismissed in an Opinion and Order dated October 25, 2000;

WHEREAS, the State of Wisconsin subsequently filed another case in the Circuit Court for Douglas County, Wisconsin entitled *State of Wisconsin v. Murphy Oil, USA, Inc.*, Case No. 00-CV-386 (“the State Court Case”), alleging similar CAA and RCRA violations as well as State law claims;

WHEREAS, the Circuit Court for Douglas County dismissed a number of the CAA claims in an Order dated May 23, 2001, and accepted the State of Wisconsin's voluntary dismissal of the remainder of the claims, without prejudice, in an Order dated July 19, 2001;

WHEREAS, to facilitate a settlement of both the United States’ and the States’ claims against Murphy, Plaintiff-Intervenor, State of Wisconsin, subsequently filed a Complaint in Intervention in this case alleging violations of State law at Defendant’s Refinery, which intervention the Plaintiff and the Defendant do not oppose in the interest of resolving various claims as set forth herein;

WHEREAS, the Parties agree that the installation of equipment and implementation of pollution control measures required by Section V of this Consent Decree will reduce annual emissions of sulfur dioxide from the Refinery beyond those reductions resulting from implementation of the injunctive relief required by Section IV of this Consent Decree;

WHEREAS, the Parties have negotiated this Consent Decree in good faith to resolve the violations alleged by the United States and the State, and as previously found by the Court, prior to the Court taking further evidence regarding the appropriate injunctive relief and civil penalties the Court should award the United States;

WHEREAS, the Parties agree that settlement of this case is in the public interest and that the entry of this Consent Decree without further litigation is the most appropriate means of resolving this case; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the claims alleged in the Plaintiffs' Complaints and violations found by the Court and that this Consent Decree adequately protects the public interest and is in accordance with the CAA, CWA, RCRA, and all other applicable federal and state laws and regulations.

NOW THEREFORE, without any further adjudication of issues of fact and law, and upon consent of the Parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and over the United States, the State and the Defendant pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 309(b) of the CWA, 33 U.S.C. § 1319(b), Sections 3008(a) and (h) and 9006 of RCRA, 42 U.S.C. §§ 9628(a) and (h)

and 6991e, and Section 325(c) of EPCRA, 42 U.S.C. § 11045(c).

2. Venue is proper in the Western District of Wisconsin pursuant to 28 U.S.C. §§ 1391 and 1395, Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Section 309(b) of the CWA, 33 U.S.C. § 1319(b), Sections 3008(a) and (h) and 9006 of RCRA, 42 U.S.C. §§ 6928(a) and (h) and 6991e, and Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and because Murphy conducts business in this District, the Refinery is located in this District, and the violations arose in this District.

II. APPLICABILITY

3. This Consent Decree shall apply to and be binding upon the United States, the State, and upon the Defendant and its successors and assigns. Defendant shall be responsible for the acts of its officers, directors, employees, agents, successors, assigns, consultants, contractors, and vendors who cause Defendant to violate the terms of this Consent Decree, unless such violations are excused in accordance with Sections XII (Force Majeure), XIV (Dispute Resolution), and/or XIX (Modification) of this Consent Decree.

4. No change in ownership, corporate status or operator of the Refinery shall in any way alter the responsibilities of Defendant under this Consent Decree. In the event of any conveyance of title, easement or other interest in the Refinery, Defendant and any successors in interest shall continue to be bound by and remain liable for performance of all obligations under this Decree. The Defendant and a contemplated future owner or operator of the Refinery may jointly request, and the

United States may consider modification of this Decree to obligate the proposed purchaser or operator to carry out future requirements of the Decree in place of or in addition to the Defendant, which request will not be unreasonably withheld. In the event of any such transfer of ownership or other interest in the Refinery, the Defendant may be released from the obligations and liabilities of this Consent Decree if at the time of such transfer, the transferee has the financial and technical ability to assume and has contractually agreed to assume these obligations and liabilities.

5. Defendant shall notify each contractor to be retained to perform Work required in this Consent Decree of each of the requirements of the Decree relevant to the activities to be performed by that contractor, including all relevant Work schedules and reporting deadlines, and shall provide a copy of this Consent Decree to each contractor already retained to perform Work related to this Consent Decree no later than thirty (30) Days after the date of lodging of this Decree. In addition, Defendant shall provide copies of all schedules for implementation of the provisions of this Consent Decree to the vendor(s) supplying the pollution control technology and/or any other equipment required by this Decree.

6. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, successors, assigns, consultants, contractors or vendors to take actions necessary to comply with the provisions hereof, unless such violations are excused in accordance with Sections XII (Force Majeure), XIV (Dispute Resolution), and/or XIX (Modification) of this

Consent Decree.

7. Murphy agrees not to contest the validity of this Consent Decree in any subsequent proceeding to implement or enforce its terms.

III. DEFINITIONS

8. Unless otherwise defined herein, terms used in this Consent Decree in the provisions that relate specifically to obligations under the CAA, CWA, and RCRA shall have the meaning given to those terms under those federal statutes and implementing regulations promulgated thereunder and State statutes and implementing regulations promulgated thereunder.

9. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "Acid Gas" shall mean any gas that contains hydrogen sulfide and is generated at the Refinery by the regeneration of an amine solution.

b. "AG Flaring" shall mean, for purposes of this Consent Decree, the combustion of Acid Gas and/or Sour Water Stripper Gas in a Flaring Device.

c. "AG Flaring Incident" shall mean the continuous or intermittent combustion of Acid Gas and/or Sour Water Stripper Gas in a Flaring Device that results in the emission of SO₂ equal to, or in excess of, five-hundred (500) pounds in any twenty-four (24) hour period; provided, however, for the purposes of this Consent Decree, an incident which extends continuously for more than a 24-hour period will

constitute one (1) AG Flaring Incident. The duration of an AG Flaring Incident shall be determined from its initial commencement until the time of its final termination. An AG Flaring Incident may entail the excess SO₂ emissions from multiple sources within a 24-hour period provided that the flaring is associated with one common event.

d. “BACT” shall mean application of Best Available Control Technology to control SO₂ emissions from the SRU that is to be determined through the WDNR PSD permit process for the Major Modifications or any other modification(s) to the SRU which the Final Permit authorizes.

e. “CAA” shall mean the Clean Air Act, as amended, 42 U.S.C. §§ 7401 to 7671q (“CAA”).

f. “CEMS” shall mean a continuous emissions monitoring system.

g. “Consent Decree” or “Decree” shall mean this Consent Decree, and all modifications made pursuant to Section XIX (Modification) of this Consent Decree.

h. “CWA” shall mean the Clean Water Act, as amended, 33 U.S.C. §§ 1251 to 1387 (“CWA”).

i. “Day” or “Days” shall mean calendar Day unless expressly stated to be a Working Day. “Working Day” shall mean a Day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last Day would fall on a Saturday, Sunday or Federal holiday, the period shall run until the close of business on the next Working Day, except that when a compliance date is specified in this Consent Decree, compliance must be achieved on or before that

date.

j. “Defendant” or “Murphy” shall mean Murphy Oil USA, Inc.

k. “Entry Date of the Consent Decree” shall mean the date the Consent Decree is approved or signed by the United States District Court Judge.

l. “FCCU” shall mean the fluidized catalytic cracking unit at the Refinery.

m. “Federal FOVs” shall refer to the Findings of Violation issued by U.S. EPA to Murphy that are identified as EPA-5-98-WI-33, dated July 31, 1998, and EPA-5-99-WI-4, dated November 25, 1998.

n. “Federal NOVs” shall refer to the Notices of Violation issued by U.S. EPA to Murphy that are referred to in the Complaint and the Amended Complaint. The NOVs are identified as follows: EPA-5-98-WI-34, dated July 31, 1998; EPA-5-99-WI-5, dated November 25, 1998; EPA-5-00-WI-10, March 30, 2000; and EPA-5-00-WI-24, dated September 29, 2000.

o. “Final Permit” shall mean the PSD permit required by Paragraph 10 of this Consent Decree, as in effect following its issuance by WDNR and the final resolution of any appeals therefrom.

p. “Flaring Device” shall mean any device at the Refinery that is subject of this Consent Decree that is used for the purpose of combusting Acid Gas and/or Sour Water Stripper Gas without subsequent sulfur recovery. The Flaring Device currently in service at the Refinery is referred to as the Refinery Flare, Wisconsin Air Emission Inventory Number I14-S20.

q. “Fresh Feed” shall mean, for this Consent Decree, the total of the Acid Gas produced from the Refinery process amine regenerator and the Sour Water Stripper Gas. “Fresh Feed” shall not include the recycled Acid Gas from the TGTU regenerator or sulfur pit fumes.

r. “Fuel Oil” shall mean any liquid fossil fuel with sulfur content of greater than 0.05% by weight.

s. “LDAR” shall mean leak detection and repair.

t. “LDAR Program” shall mean the program Defendant is required to operate under Federal and State law and regulations.

u. “Major Modification” or “Major Modifications” shall mean the modifications the Court found Defendant made to its SRU in 1988, and made again to the SRU and/or Number 2 Distillate Unifiner in 1991 to 1993, under the PSD and/or NSPS Programs in its Opinions and Orders issued on May 18, 2001, as amended, and August 1, 2001, as amended.

v. “Malfunction” shall mean, as specified in 40 C.F.R. Part 60.2, “any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.”

w. “Minor NSR” shall mean a State or local new source review permit program for construction or modification of stationary sources when such construction

or modification is not subject to PSD or major non-attainment area review.

x. “NSPS” shall refer to the New Source Performance Standards as defined in 40 C.F.R. Part 60.

y. “PSD” shall refer to the Prevention of Significant Deterioration provisions under the CAA and its implementing federal and state regulations.

z. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic number.

aa. “Parties” shall refer to the United States of America, Plaintiff, the State of Wisconsin, Plaintiff-Intervenor, and Murphy Oil USA, Inc., Defendant. “Party” shall mean any one of Parties.

bb. “Plaintiff” shall mean the United States.

cc. “Plaintiff-Intervenor” shall mean the State of Wisconsin.

dd. “Plaintiffs” shall mean the United States and the State of Wisconsin.

ee. “RCRA” shall mean Subchapter III of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6921 to 6939e.

ff. “Refinery” shall mean the petroleum refinery located at 2400 Stinson Avenue, Superior, Douglas County, Wisconsin.

gg. “Region 5” shall mean the Region 5 Office of the United States Environmental Protection Agency.

hh. “Root Cause” shall mean the primary cause(s) of an AG Flaring Incident(s) or a Tail Gas Incident(s) as determined through a process of investigation.

- ii. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.
- jj. "SEP" shall mean a supplemental environmental project that U.S. EPA has found meets the requirements of *U.S. EPA's Supplemental Environmental Projects Policy*, effective May 1, 1998.
- kk. "SIP" shall mean the Wisconsin State Implementation Plan.
- ll. "Shutdown" shall mean the cessation of operation of equipment for any purpose.
- mm. "Sour Water Stripper Gas" or "SWS Gas" shall mean the gas produced by the process of stripping Refinery sour water.
- nn. "SO_x" shall mean sulfur oxides.
- oo. "SO₂" shall mean sulfur dioxide.
- pp. "SRU" shall mean the Claus sulfur recovery plant/unit.
- qq. "Startup" shall mean the setting in operation of equipment for any purpose.
- rr. "State" shall refer to the State of Wisconsin, including the Wisconsin Department of Justice and Wisconsin Department of Natural Resources.
- ss. "State NOVs and LONs" shall mean the Notices of Violation and Letters of Non-Compliance issued by WDNR to Murphy on the following dates: February 2, 1995; May 15, 1996; February 7, 1997; May 18, 1998; June 5, 1998; August 13, 1998; November 2, 1998; November 20, 1998; and February 10, 1999.

tt. “Sulfur Shedding Procedures” shall mean the process Defendant undertakes when it makes operational changes to the Refinery to reduce the sulfur compounds produced in Refinery processes, which are normally fed to the amine system or sour water stripper.

uu. “Tail Gas” shall mean: (1) the exhaust gas stream from the SRU that is routed to the TGTU and/or that may be routed to the Tail Gas combustor and/or (2) the exhaust gas from the TGTU that is routed to the Tail Gas combustor.

vv. “Tail Gas Treatment Unit” (“TGTU”) shall mean a control system utilizing a technology for reducing emissions of sulfur compounds from an SRU.

ww. “TG Incident” shall mean, for the purpose of this Consent Decree, combustion of Tail Gas in a thermal combustor resulting in 500 pounds or more of excess SO₂ emissions in any 24-hour period. The determination of whether a TG Incident has occurred and the amount of excess SO₂ emissions shall be based on those one hour periods during which the average concentration of SO₂ exceeds 250 ppm within a 24-hour period that contains at least one rolling 12-hour average in excess of the 250 ppm SO₂ limitation. If the concentration of SO₂ in the exhaust gas stream from the tail gas combustor exceeds the top end of the range of the SO₂ CEM installed on the tail gas combustor exhaust gas stream or if the SO₂ CEM is out of service, Murphy shall use best engineering judgment and/or other monitoring data to determine the level of excess SO₂ emissions.

xx. “Upstream Process Units” shall mean all amine absorption towers, amine

regenerator, and the sour water stripper at the Refinery that are subject to this Consent Decree, as well as all process units at the Refinery that produce gaseous or aqueous waste streams that are processed at amine absorption towers, amine scrubbers, or the sour water stripper.

yy. “United States” shall mean the United States of America, including the United States Department of Justice and the United States Environmental Protection Agency.

zz. “U.S. EPA” or “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

aaa. “WDNR” shall mean the Wisconsin Department of Natural Resources and any successor departments or agencies of the State.

bbb. “Work” shall mean all activities Defendant is required to perform under this Consent Decree.

IV. INJUNCTIVE RELIEF

A. Compliance with PSD Program for SRU

10. **PSD Permit Application** On December 20, 2001, Murphy submitted an application for a PSD permit to WDNR covering, among other things, all Major Modifications to its SRU at the Refinery. Murphy may amend the PSD permit application. The PSD permit application included an evaluation of BACT for all Major Modifications to the SRU and a proposal for constructing and operating pollution

control equipment that would allow Murphy to meet and comply with the SO₂ emission limitation for the SRU as set forth in Paragraph 11.b. Murphy shall diligently pursue issuance of the PSD permit, which is subject to the requirements set forth in Section VI (Permitting) below, and shall provide all necessary supplemental information.

11. **Pollution Control Requirements for the SRU** Although BACT will be determined through the WDNR PSD permit process, for the purposes of this Decree, Murphy shall, at a minimum, install the following pollution control equipment and limit the SO₂ emissions from its SRU at the Refinery to the following level:

a. **Installation of Pollution Control Equipment/Measures** No later than January 1, 2003, Murphy shall, regardless of the status of its PSD permit application, install and operate a TGTU and associated Tail Gas combustor on its SRU and any other pollution control equipment/ measures necessary to meet the emission limitations set forth in Subparagraph 11.b. below. Prior to operation of the new Tail Gas combustor, Murphy shall reroute the sulfur pit emissions to the front of the SRU as required by Subparagraph 11.c. below. Such installation of pollution control equipment/ measures, including any measures necessary to maintain a maximum sulfur input limitation to the SRU of no more than 22.8 long tons per Day of Fresh Feed, shall commence as soon as practicable.

b. **Sulfur Dioxide Emission Limitation** Commencing no later than March 1, 2003, SO₂ emissions from the SRU shall, at a minimum, meet the following standards,

regardless of the status of Murphy's PSD permit application:

(i) Sulfur Dioxide Emissions from TGTU When the sulfur input rate to the SRU meets or exceeds 5 long tons per day of Fresh Feed, SO₂ emissions shall not exceed 150 ppmvd SO₂ at 0% oxygen, based on a 24-hour rolling average; and

(ii) Maximum Sulfur Input Limitation Sulfur input to the SRU shall not exceed 22.8 long tons per day of Fresh Feed, unless Murphy has received a permit authorizing a higher sulfur input limitation.

c. Sulfur Pit Emissions No later than January 1, 2003, Murphy shall reroute the sulfur pit emissions to the front of the SRU. No later than March 1, 2003, the sulfur pit emissions from its SRU shall be included as part of the emission limitation set forth in Paragraph 11.b.(i) above.

d. WDNR BACT Determination If the Final Permit includes an SO₂ emission limitation that is more stringent than the concentration element of the SO₂ emission limitation set forth in Subparagraph 11.b.(i) above, then said Subparagraph shall be modified to meet the more stringent SO₂ concentration requirements pursuant to Section XIX (Modification) of this Consent Decree. If the Final Permit allows Murphy to increase the capacity of the SRU to 30 long tons per day of Fresh Feed, then Subparagraph 11.b.(i) shall be modified to make the sulfur input level at which the SO₂ emission limitation applies the lesser of 6 long tons per day of Fresh Feed or the level identified in the Final Permit. If WDNR determines that technology other than the TGTU installed pursuant to Subparagraph 11.a. above is required to comply with

BACT, then, to the extent such determination prevents Murphy from meeting any compliance date, that determination shall qualify as a Force Majeure event under Section XII (Force Majeure) of this Consent Decree.

12. **Waiver of Right to Contest BACT Determination** Murphy hereby relinquishes its right to appeal in any resultant State permit proceeding:

a. The fact that a PSD permit is required for its Major Modifications to its SRU; and

b. That BACT will at least meet the pollution control requirements for the SRU set forth in Subparagraphs 11.b.(i) and 11.c. above, provided however that:

(i) this waiver does not apply to start-up, shut-down, or malfunctions provisions contained in its PSD permit, if any; and

(ii) this waiver does not apply to the sulfur input level at which the SO₂ emission limitation applies if such level is established in the permit at:

(a) less than 5 long tons per day of Fresh Feed for an SRU input capacity of 22.8 long tons per day of Fresh Feed, and

(b) less than 6 long tons per day of Fresh Feed for an SRU sulfur input capacity of 30 long tons per day of Fresh Feed.

13. **Design of Control Technology** No later than ninety (90) Days prior to the scheduled installation of any equipment required to be installed at the Refinery pursuant to Section IV.A. and Section IV.B. of this Consent Decree, Murphy shall submit to U.S. EPA and WDNR the then existing pre-construction process flow

diagrams, piping and instrumentation diagrams, design plans, and a list of such equipment. Within thirty (30) Days from the date of the next turnaround of the Refinery, Murphy shall update all such process flow diagrams, piping and instrumentation diagrams, and equipment lists to "as constructed" status and shall submit the completed documents to U.S. EPA and WDNR. The "as constructed" documents shall highlight all changes made from the pre-construction documents. For any process unit, boiler or process heater which is physically changed in order for Murphy to meet the requirements of Section V (Supplemental Environmental Projects) of this Consent Decree, no later than August 1, 2002, Murphy shall submit to U.S. EPA and WDNR a list of the equipment physically changed and "as constructed" process flow diagrams, piping and instrumentation diagrams and equipment lists.

14. **Installation of Low NOx Burner** No later than January 1, 2003, Murphy shall install a Low NOx Burner in the new Tail Gas combustor. This Low NOx burner shall be designed to achieve a NOx emission rate no higher than 0.05 pounds NOx /mmBTU heat input.

B. Compliance with NSPS Requirements for SRU

15. **Applicability** Commencing no later than March 1, 2003, Murphy shall be subject to, and shall thereafter continuously comply with, the applicable provisions of NSPS Part 60, Subparts A and J, with respect to SRUs including, but not limited to, monitoring, record keeping, reporting and operating requirements of the NSPS regulations applicable to SRUs, in addition to the conditions in any applicable State

permit.

16. **Compliance With Subparts A and J**

a. **Sulfur Dioxide Emission Limitation** Commencing no later than March 1, 2003, Murphy shall, regardless of the status of its PSD permit application, comply with the applicable Tail Gas emission limitation for SO₂, a 12-hour rolling average of 250 ppmvd SO₂ at 0% oxygen, as required by 40 C.F.R. § 60.104(a)(2).

b. **Installation of Pollution Control Equipment/Measures** No later than January 1, 2003, Murphy shall, regardless of the status of its PSD permit application, install and operate the pollution control equipment/measures necessary to limit emissions of SO₂ from its SRU to the level set forth in Subparagraph 16.a. above, including emissions from its sulfur pit. Murphy shall only route the SRU exhaust stream to the TGTU or the Tail Gas combustor (Wisconsin Air Emissions Inventory ID Number I10, S12). Such installation of pollution control equipment, including any measures necessary to maintain a maximum sulfur input limitation to the SRU of no more than 22.8 long tons per day of Fresh Feed, shall begin as soon as practicable.

c. **SRU Operations and Monitoring** Commencing no later than March 1, 2003, Murphy shall:

(i) For all periods of operation of its SRU, comply with 40 C.F.R. § 60.104(a)(2), except during periods of Startup, Shutdown or Malfunction of the SRU or during a Malfunction of the TGTU. For the purposes of this Subparagraph, if the SRU

is still operating, then the time period of the Malfunction or period of non-compliance of the TGTU shall be determined from the time the emissions from the Tail Gas combustor exceed the emission limitation set forth in 40 C.F.R. § 60.104(a)(2), until the time the emissions from the Tail Gas combustor comply with 40 C.F.R. § 60.104(a)(2). For the purpose of determining compliance with the SRU NSPS emission limits, the “start-up/shutdown” provisions set forth in NSPS Subpart A shall apply to the SRU and not to the independent start-up or shut-down of its TGTU. However, for the purposes of this Paragraph, the Malfunction exemption set forth in NSPS Subpart A shall apply to both the SRU and the TGTU.

(ii) Monitor all emission points to the atmosphere for Tail Gas emissions from its SRU, and report excess emissions, as required by 40 C.F.R. §§ 60.7(c), 60.13, and 60.105(a)(5), to U.S. EPA and WDNR. During the pendency of this Consent Decree, Murphy shall continue to monitor SRU emissions using CEMS at its stack emissions point. The SRU CEMS shall be calibrated, maintained, and operated in accordance with the applicable requirements at 40 C.F.R. §§ 60.11 and 60.13.

(iii) At all times, including periods of Startup, Shutdown, and Malfunction, to the extent practicable, operate and maintain its SRU, its TGTU, and any other supplemental control devices, in accordance with its obligation to minimize SRU emissions through the implementation of good air pollution control practices as required in 40 C.F.R. § 60.11(d).

d. **Planning/Reporting Requirements**

(i) No later than January 1, 2003, Murphy shall submit to U.S. EPA and WDNR a plan, implemented or to be implemented no later than March 1, 2003, for good maintenance and operation of its SRU, the TGTU, any other supplemental control devices/measures, and the appropriate Upstream Process Units ("SRU Plan"). The SRU Plan shall be a compilation of Murphy's approach for exercising good air pollution control practices for minimizing SO₂ emissions. The SRU Plan shall provide for continuous operation of the SRU between scheduled maintenance turnarounds with minimization of emissions from the SRU. The SRU Plan shall include, but not be limited to, Sulfur Shedding Procedures, startup and shutdown procedures, emergency procedures and standard practices to coordinate maintenance turnarounds of its SRU, TGTU, and any other supplemental pollution control equipment/measures to coincide with scheduled turnarounds of major Upstream Process Units. The SRU Plan also shall include provisions to perform a Root Cause analysis of any AG Flaring Incident or TG Incident and report the results of any such analysis to WDNR and U.S. EPA within thirty (30) Days of the end of the AG Flaring Incident or TG Incident. Such report(s) shall include:

(a) The date and time that the AG Flaring Incident or the TG Incident started and ended;

(b) An estimate of the quantity of SO₂ that was emitted and the calculations used to determine that quantity;

(c) The steps, if any, that Murphy took to limit the duration and/or quantity of SO₂ emissions during the AG Flaring Incident or TG Incident;

(d) A detailed analysis that sets forth the Root Cause of that AG Flaring Incident or TG Incident, and all contributing causes, to the extent determinable; and

(e) A description of any corrective actions that Murphy has implemented, or proposes to implement (including a schedule for their implementation) subject to applicable permitting requirements, to reduce or eliminate the recurrence of an AG Flaring Incident or TG Incident stemming from the same Root Cause.

(ii) U.S. EPA and/or WDNR may, within sixty (60) Days from the receipt of the SRU Plan required by Subparagraph 16.d.(i), identify concerns with the SRU Plan, if any. If U.S. EPA and/or WDNR identify any concerns with the SRU Plan, then Murphy may, at its option, revise the SRU Plan to address said concerns. U.S. EPA and/or WDNR do not, however, by identifying or failing to identify, any concerns with the SRU Plan, warrant or aver in any manner that any of Murphy's maintenance or air pollution control practices to minimize SO₂ emissions shall result in compliance or non-compliance with the CAA or its implementing federal or state regulations. Murphy must follow and comply with the SRU Plan at all times, including periods of Startup, Shutdown, and Malfunction of the SRU. For the pendency of this Consent Decree, any SRU maintenance or operational improvements related to minimizing SO₂ emissions made by Murphy to the SRU Plan during the reporting period shall be summarized in an annual SRU Plan report to be submitted to U.S. EPA and WDNR

pursuant to Paragraph 45 of this Consent Decree.

C. Compliance with Wisconsin SIP - LDAR

17. **Leak Detection and Repair ("LDAR") Program** In order to minimize fugitive emissions of volatile organic compounds ("VOCs"), benzene, and organic hazardous air pollutants ("HAPs") from equipment in light liquid and/or in gas/vapor service, Murphy shall undertake the following measures to increase the effectiveness of the Refinery's LDAR Program for a period of five (5) years:

a. **Written Refinery-Wide LDAR Program** No later than June 1, 2002, Murphy shall develop and maintain a written refinery-wide program for LDAR compliance at its Refinery. The refinery-wide LDAR program shall include, at a minimum:

- (i) An identification of all equipment in light liquid and/or in gas/vapor service within each process unit at the Refinery and the regulatory LDAR provisions such equipment is subject to;
 - (ii) Procedures for identifying leaking equipment within process units at the Refinery;
 - (iii) Procedures for repairing and keeping track of leaking equipment;
- and
- (iv) Procedures for identifying and including new equipment in its LDAR program.

b. **Training** No later than June 1, 2002, Murphy shall implement the

following LDAR training programs at the Refinery:

(i) For personnel newly-assigned to LDAR responsibilities, Murphy shall require LDAR training prior to each such employee beginning such work;

(ii) For all personnel assigned LDAR responsibilities, Murphy shall provide and require completion of annual LDAR training; and

(iii) For all other Refinery operations and/or maintenance personnel (including contract personnel), Murphy shall provide and require completion of an initial training program and annual LDAR review that includes instruction on aspects of LDAR that are relevant to the person's duties.

c. **LDAR Monitoring Frequency** Commencing no later than July 15, 2002, Murphy shall implement quarterly monitoring of all valves and pumps at the Refinery subject to LDAR monitoring (except pumps otherwise subject to monthly monitoring). Murphy shall provide U.S. EPA and WDNR with fourteen (14) Days advance notice of the quarterly monitoring events, and shall allow inspectors to be present during any such LDAR monitoring event.

d. **Quality Assurance/Quality Control Program** Commencing no later than June 1, 2002, Murphy shall develop and implement a procedure to ensure a quality assurance/quality control ("QA/QC") review of all data generated by LDAR monitoring technicians. Murphy shall ensure that any LDAR monitoring data provided to Murphy by its contractor is reviewed for QA/QC by the contractor. At least quarterly (including all monthly LDAR monitoring events occurring during that quarter), Murphy shall perform QA/QC of the contractor's monitoring data which shall

include, but not be limited to, the number of components monitored per technician, the time between monitoring events, and abnormal data patterns, if any.

e. **LDAR Audits** Commencing February 1, 2004, Murphy shall retain a contractor to perform two third-party audits of its Refinery-wide LDAR program. Murphy shall conduct the first third-party audit following completion of Murphy's April 2004 quarterly monitoring event and shall complete such audit by no later than August 1, 2004. Such audit shall include a review of all LDAR monitoring events occurring during such quarter. Murphy shall conduct its second third-party audit following the completion of Murphy's April 2006 quarterly monitoring event and shall complete such audit no later than August 1, 2006. Such audit shall include a review of all LDAR monitoring events occurring during such quarter. Such third-party audits shall include, but not be limited to, comparative monitoring of all valves, records review, tagging, and data management. Both third-party audits should commence no earlier than fifteen (15) Days, and no later than thirty (30) Days, from the completion of the quarterly LDAR monitoring event.

(i) **Non-Compliance** If the results of either third-party audit conducted identify any areas of non-compliance, Murphy shall implement, as soon as practicable, all steps necessary to correct the area(s) of non-compliance, and to prevent, to the extent practicable, a recurrence of the cause of the non-compliance.

(ii) **Audit Policy** Nothing in this Subparagraph is intended to limit or disqualify Murphy, on the grounds that information was not discovered and supplied

voluntarily, from seeking to apply U.S. EPA's audit policy or a state audit policy, if any, to any LDAR violations or non-compliance that Murphy's third-party auditor discovers during the course of any audit that is required to be undertaken pursuant to this Subparagraph.

f. **Leak Definition**

(i) Commencing no later than July 1, 2002, Murphy shall utilize the following internal leak definitions:

(a) 500 ppm for all of the Refinery's valves in light liquid and/or gas/vapor service, excluding pressure relief devices, unless regulatory changes require the use of lower leak definitions; and

(b) 2,000 ppm for the Refinery's pumps, unless regulatory changes require the use of lower leak definitions.

(ii) For regulatory reporting purposes, Murphy may continue to report leak rates in valves and pumps against the applicable regulatory leak definition, or may use the lower, internal leak definitions in this Subparagraph.

(iii) Murphy shall record, track, repair (subject to the "delay of repair" provisions in Subparagraph 17.n. below) and re-monitor all leaks in excess of the internal leak definitions specified in Subparagraph 17.f.(i) above, except that Murphy shall have thirty (30) Days to make repairs and re-monitor leaks that are greater than the internal leak definitions, but less than the applicable regulatory leak definitions. Murphy shall re-monitor for two (2) consecutive months all valves found leaking.

g. **First Attempt at Repairs on Valves** Commencing no later than July 1, 2002, Murphy shall make a “first attempt” at repair on any valve that is subject to monitoring pursuant to this Paragraph that has a reading greater than 100 ppm of VOCs. The “first attempt” at repair and subsequent re-monitoring for leaks shall be completed no later than the day after the leak is identified (except for control valves, check valves, and relief valves). Murphy shall not be obligated to make more than one “first attempt” if the repair was unsuccessful, provided that the leak is below the internal leak definition required by Subparagraph 17.f.(i)(a) above. By September 1, 2004, U.S. EPA may reassess this program to determine if continuing this first attempt at repair is appropriate.

h. **Dataloggers/Electronic Storage Database** Commencing no later than July 1, 2002, Murphy shall establish and shall continue to maintain an electronic database for storing and reporting all LDAR data that includes, at a minimum, using dataloggers and/or electronic data collection devices during all LDAR monitoring. For each monitoring event, the collected monitoring data shall include, at a minimum, the recording of the time and date, an operator identification, and an instrument identification. In instances where monitoring data cannot be collected electronically, such data shall be recorded manually and entered in the electronic storage database within five (5) Working Days.

i. **Contracted Programs** Commencing no later than June 1, 2002, if Murphy subcontracts its LDAR monitoring program at the Refinery, then Murphy shall require its LDAR contractor to submit monitoring activity reports on a daily basis and shall

require its LDAR contractor to conduct a quality assurance/quality control ("QA/QC") review of all data before the data is included in an LDAR quarterly monitoring report.

j. **LDAR Personnel** No later than June 1, 2002, Murphy shall establish a program that will hold LDAR personnel accountable for LDAR performance. Murphy shall designate one individual, which may be changed from time to time, as the person responsible for LDAR coordination, and this person shall be authorized to implement the LDAR Program and propose any improvements. If the individual responsible for LDAR coordination changes, Murphy will provide U.S. EPA and WDNR written notification of such change within thirty (30) Days.

k. **Adding New Valves and Pumps** Commencing no later than June 1, 2002, Murphy shall establish a tracking program for maintenance records to ensure that valves and pumps in light liquid and/or in gas/vapor service added to the Refinery during maintenance/construction are integrated into the LDAR program.

l. **Monitoring After Turnaround or Maintenance** Murphy shall have the option of monitoring affected valves within process units within fourteen (14) Working Days of completing a documented maintenance, startup, or shutdown activity without having the results of the monitoring count as a scheduled monitoring activity. For the purposes of this Subparagraph, "completion of documented start-up" shall mean the date on which the Refinery has returned to typical and stable operations.

m. **Calibration Drift Assessment** For LDAR monitoring events occurring on or after July 1, 2002, Murphy shall conduct calibration drift assessments of the LDAR

monitoring equipment in accordance with 40 C.F.R. Part 60, U.S. EPA Reference Test Method 21, at a minimum, at the end of each monitoring shift. Murphy agrees that if any calibration drift assessment after the initial daily calibration shows a downward drift of more than 10%, Murphy shall re-monitor all valves that were monitored since the last calibration and that had readings greater than 100 ppm and shall re-monitor all pumps that were monitored since the last calibration and that had readings greater than 500 ppm.

n. **Delay of Repair** No later than July 1, 2002, for any valves Murphy is required under the applicable regulations to place on the “delay of repair” list for repair, Murphy shall:

(i) Require sign-off by the unit supervisor that it is infeasible to repair the valve without process unit shutdown before the component is eligible for inclusion on the “delay of repair” list;

(ii) Establish a leak level of 50,000 ppm at which it will undertake its best efforts to fix the leak of greater than 50,000 ppm, rather than put the valve on the “delay of repair” list, unless there is a safety, mechanical, or major environmental concern posed by repairing the leak in this manner;

(iii) Include valves that are placed on the “delay of repair” list in its regular LDAR monitoring, and undertake its best efforts to repair the valve within thirty (30) Days if the leak reaches 50,000 ppm, unless there is a safety, mechanical, or major environmental concern posed by repairing the leak in this manner; and

(iv) Undertake its best efforts to repair valves that have been on the “delay of repair” list for a period of three (3) years and leaking at a rate of 10,000 ppm within thirty (30) Days, unless there is a safety, mechanical, or major environmental concern posed by repairing the leak in this manner.

(v) For the purposes of this Subparagraph, “best efforts” shall mean attempting more than one method to repair the valves if the first or subsequent attempt(s) at repair is unsuccessful, or making more than one attempt to repair the valves using the same method if another repair method is not feasible (*e.g.*, more than one “drill and tap” repair for valves). “Best efforts” does not mean that a successful repair must occur; it means an effort as defined in this Subparagraph must be made.

o. **LDAR Program Recordkeeping and Reporting Requirements**

(i) **Quarterly Reports** Commencing with the quarter that begins July 1, 2002, Murphy shall submit quarterly monitoring reports to U.S. EPA and WDNR with the results of the LDAR monitoring performed at the Refinery by no later than November 1, February 1, May 1, and August 1 during each calendar year. This report shall include:

- (a) a list of the process units monitored during the quarter;
- (b) whether each process unit is complying with quarterly monitoring;
- (c) the number of valves and pumps monitored in each process unit;

- (d) the number of valves and pumps found leaking; and
- (e) the projected date of the next monitoring event.

The quarterly report shall also include a list of all valves and pumps currently on the delay of repair list and the date each component was put on such list.

(ii) First Quarterly Report In the first quarterly report in which the requirement becomes due (quarterly report due November 1, 2002), Murphy shall include the following:

- (a) A certification, pursuant to Paragraph 46, that the “first attempt at repair” program of Paragraph 17.g. has been implemented;

- (b) A certification, pursuant to Paragraph 46, that the QA/QC procedures for review of data generated by LDAR technicians as required by Subparagraphs 17.d. and 17.i. have been implemented;

- (c) An identification of the individual at the Refinery responsible for LDAR performance as required by Subparagraph 17.j.;

- (d) A certification, pursuant to Paragraph 46, of the development of a tracking program for new valves and pumps added during maintenance and construction as required by Subparagraph 17.k.;

- (e) A certification, pursuant to Paragraph 46, that Murphy utilizes, pursuant to the requirements of Subparagraph 17.h., electronic data collection devices during LDAR monitoring;

- (f) A certification, pursuant to Paragraph 46, that the

implementation of the calibration drift assessment procedures of Subparagraph 17.m.;
and

(g) A certification, pursuant to Paragraph 46, that the “delay of repair” procedures of Subparagraph 17.n. have been implemented.

(h) A certification, pursuant to Paragraph 46, that the training programs required by Subparagraph 17.b. have been implemented. Such training programs report shall include a description of the different training programs implemented.

(iii) Audit Reports Murphy shall submit reports to U.S. EPA and WDNR for the third-party audits conducted pursuant to Paragraph 17.e. above. These reports shall include a written narrative of the corrective actions that Murphy shall make in response to any deficiencies identified in the audit reports. The first third-party audit report shall be due September 1, 2004. The second third-party audit report shall be due September 1, 2006.

D. Compliance with Spill Prevention Control and Countermeasure Requirements

18. **Measurement of Secondary Containment** Within thirty (30) Days from the Entry Date of the Consent Decree, Murphy shall submit to U.S. EPA and WDNR accurate measurements from an independent, registered surveyor or registered professional engineer that measures the actual capacity of the secondary containment areas for Tanks 21, 22, 23 and 57.

19. **Measurement Revisions** If the measurements submitted under Paragraph 18 differ from the measurements in Murphy’s SPCC Plan in effect as of the

Entry Date of the Consent Decree, then Murphy must revise its SPCC Plan, within sixty (60) Days from the Entry Date of the Consent Decree, to reflect the actual secondary containment capacities existing on the Entry Date of the Consent Decree.

20. **Increase in Secondary Containment** If the measurements required by Paragraph 18 show that the secondary containment capacity for any of the tanks in question existing as of the Entry Date of the Consent Decree is less than that required by 40 C.F.R. § 112.7(e)(2)(ii), then Murphy must provide adequate secondary containment for each such tank no later than May 1, 2002.

21. **SPCC Plan Certification** If any revision to Murphy's SPCC Plan is necessary pursuant to Paragraph 19, then within sixty (60) Days from the Entry Date of the Consent Decree, Murphy must have an independent, registered professional engineer review the amended SPCC Plan and certify it pursuant to 40 C.F.R. § 112.3(d).

22. **Reporting** Murphy shall submit a certified SPCC Injunctive Relief Report to U.S. EPA no later than June 1, 2002. Such certification shall comply with Paragraph 46, and shall include a statement that the requirements of Paragraphs 18-21 of the Decree have been satisfied.

V. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

23. **Pollution Reduction SEPs** The Parties agree that measures to reduce SO₂ emissions from the FCCU and the reduction in Fuel Oil burning in process heaters and boilers at the Refinery, to the extent that they are not otherwise required by law, shall be considered environmentally beneficial pollution reduction SEPs. For the pendency

of this Consent Decree, Murphy shall perform the following SEPs to reduce SO₂ emissions from the Refinery, and Murphy will propose that such SEPs be considered pollution control projects for New Source Review purposes:

a. Use of SO_x Transfer Catalyst at the FCCU Commencing no later than May 1, 2002, Murphy shall implement a SEP to reduce SO₂ emissions from its FCCU by using a SO_x transfer catalyst. The FCCU SEP shall comply with the following requirements:

(i) Sulfur Dioxide Emission Limitation Commencing no later than May 1, 2002, SO₂ emissions from the FCCU shall be no greater than 34.7 tons per month of SO₂, averaged over any consecutive 12-month period. The first measure of compliance shall be determined on May 1, 2003, for the period from May 1, 2002, through April 30, 2003, using a 12-month rolling average.

(ii) Permitting No later than thirty (30) Days after the Entry Date of the Consent Decree, Murphy shall apply to WDNR to incorporate into the relevant permit(s) the limitation set forth in Subparagraph 23.a.(i) above. The SO₂ emission limitation must be included in a permit that is federally enforceable.

(iii) Total SEP Cost Murphy shall spend at least the following amount on this FCCU SO_x transfer catalyst SEP:

(a) For the initial capital costs to modify the FCCU, at least fifty thousand dollars (\$50,000). The initial capital costs shall include any capital costs Murphy demonstrates are related to the initial cost expended by Defendant to modify

the FCCU to implement this SEP.

(b) For the average annual cost of the SO_x transfer catalyst, at least four hundred forty thousand dollars (\$440,000) per year for five (5) years, or a total of two million, two hundred thousand dollars (\$2,200,000) over the total five (5) year period.

(c) Murphy estimates and has represented to the United States and the State that the FCCU SEP will require approximately \$2,250,000 in expenditures over a five (5) year period. If, after review of the SEP Completion Report required to be submitted pursuant to Paragraph 26 below, U.S. EPA determines that Murphy has satisfactorily completed the FCCU SEP, but has expended less than \$2,025,000 (90% of \$2,250,000) in completing the project Murphy shall pay a civil penalty equal to the amount of the difference between 90% of the estimated cost and the actual amount spent on the project, in addition to any other civil penalty or stipulated penalty payable under this Consent Decree. If, after review of the SEP Completion Report required to be submitted pursuant to Paragraph 26 below, U.S. EPA determines that Murphy has satisfactorily completed both SEPs and has expended more than \$2,475,000 (110% of \$2,250,000) for the FCCU SEP, U.S. EPA shall credit any amount spent in excess of said amount for the purposes of determining whether Murphy has satisfied the expenditure requirements set forth in Subparagraph 23.b.(iv)(c) below.

b. **Reduction in Fuel Oil Burning from Refinery Process Heaters and Boilers** Murphy shall undertake the following measures to reduce SO₂ emissions from

Refinery process heaters and boilers by minimizing the burning of Fuel Oil as follows:

(i) Reduction of SO₂ Emissions Commencing no later than May 1, 2002, Murphy shall reduce its burning of Fuel Oil in its process heaters and boilers. Fuel Oil burning in its process heaters and boilers shall meet an SO₂ emission limitation of 33.3 tons per month, averaged over any consecutive 12-month period. The first measure of compliance shall be determined on May 1, 2003, for the period from May 1, 2002, through April 30, 2003, using a 12-month rolling average.

(ii) Methodology to Determine Compliance Murphy shall:

(a) Sample the Fuel Oil twice per week and analyze it for sulfur content. The sampling shall be conducted in accordance with Wis. Admin. Code § NR 439.08(2)(a) and sulfur testing shall be conducted in accordance Wis. Admin. Code § NR 439.08(2)(b).

(b) Develop and maintain a record that includes the date each sample was taken, the date each sample was analyzed for sulfur content, and the sulfur content, by weight, of each sample tested as set forth in Subparagraph 23.b.(ii)(a) above.

(c) Develop and maintain a monthly record of the total quantity, in gallons, of Fuel Oil combusted at the Refinery and the weighted average sulfur content of said fuel based on the fuel sampling and sulfur content analysis required under Subparagraphs 23.b.(ii)(a) and (b) above.

(iii) Permitting Within thirty (30) Days after the Entry Date of the Consent Decree, Murphy shall apply to WDNR to incorporate into the relevant

permit(s) the limitation set forth in Subparagraph 23.b.(i) above. The SO₂ emission limitation for Fuel Oil burning must be included in a permit that is federally enforceable.

(iv) Total SEP Cost Murphy shall spend at least the following amounts on the Fuel Oil burning reduction SEP:

(a) For the initial capital costs to modify the process heaters and boilers at the Refinery to burn additional natural gas, one million dollars (\$1,000,000). The initial capital costs shall include: the costs of isolating and interconnecting the piping to the Superior main gas line; installing a “pig catcher station” and “pig launcher”; installing any underground and above-ground high-pressure piping; installing any required pipe rack modifications and/or additions; installing any metering facilities; installing any pressure letdown and regulation facilities; making any control system modifications; and modifying any burners and/or re-tubing any crude heaters; and such other capital costs Murphy demonstrates are related to the initial capital cost of this SEP.

(b) For the average annual cost of natural gas to reduce the burning of Fuel Oil, eight hundred fifty thousand dollars (\$850,000) per year for five (5) years, or a total of four million, two hundred fifty thousand dollars (\$4,250,000) over the total five (5) year period. This increase in the average annual cost of natural gas will be determined using the following equation:

Annual Cost = ((Quantity of natural gas combusted in the boilers and process heaters in MMBTU in any year) - (Average Quantity of natural gas combusted in

the boilers and process heaters in calendar years 1997, 1998 and 1999 in
MMBTU)) x Average Cost of natural gas in dollars per MMBTU

(c) Murphy estimates and has represented to the United States and the State that the Reduction in Fuel Oil Burning SEP will require approximately \$5,250,000 in expenditures over a five (5) year period. If, after review of the SEP Completion Report required to be submitted pursuant to Paragraph 26 below, U.S. EPA determines that Murphy has satisfactorily completed the Reduction in Fuel Oil Burning SEP, but has expended less than \$4,725,000 million (90% of \$5,250,000) in completing the project Murphy shall pay a civil penalty equal to amount of the difference between 90% of the estimated cost and the actual amount spent on the project, in addition to any other civil penalty or stipulated penalty payable under this Consent Decree. If, after review of the SEP Completion Report required to be submitted pursuant to Paragraph 26 below, U.S. EPA determines that Murphy has satisfactorily completed both SEPs, and has expended more than \$5,775,000 (110% of \$5,250,000) on the Reduction in Fuel Oil Burning SEP, U.S. EPA shall credit any amount spent in excess of said amount for the purposes of determining whether Murphy has satisfied the expenditure requirements set forth in Subparagraph 23.a.(iii)(c) above.

24. **SEP Representation** Murphy represents that, as of the Entry Date of the Consent Decree, it is not required and has no liability to perform or develop either of the SEPs set forth in Paragraph 23 under any Federal, State, or local law, regulation, or permit. Murphy further represents that it is not required to perform or develop the

SEPs set forth in Paragraph 23 by agreement, grant, or injunctive relief, and has not received and will not negotiate to receive credit for emission reductions from the SEPs, other than the potential use of NO_x emission reductions to the extent Murphy meets the requirements set forth in Paragraph 34, in any other Federal, State, or local enforcement action. Based on Murphy's representations, U.S. EPA has determined that the FCCU and Reduction in Fuel Oil Burning SEPs set forth in Paragraph 23 above qualify as environmentally beneficial pollution reduction SEPs. If the United States makes a determination that the representations set forth in this Paragraph 24 are materially misleading or false with regard to a particular SEP, Murphy shall not receive any civil penalty mitigation for the particular SEP and Murphy shall be required to pay the United States an additional civil penalty of \$1.1 million for the SEP set forth Subparagraph 23.a., and/or \$2.3 million for the SEP set forth in Subparagraph 23.b., plus interest on the amount(s) from the Entry Date of the Consent Decree at the rate and terms set forth in Section IX (Interest) of this Consent Decree. If Murphy disputes such determination made by the United States, then it may seek resolution of the dispute in accordance with Section XIV (Retention of Jurisdiction/Dispute Resolution) of this Consent Decree.

25. **Annual SEP Reporting**

a. **Reporting Obligations** During the pendency of this Consent Decree, as part of its annual reporting requirements set forth in Paragraph 45 below, Murphy shall submit annual reports detailing the implementation of the SEPs required under this Consent Decree. The Annual SEP Reports shall be certified in accordance with

Paragraph 46 of this Consent Decree, and shall include the following information with respect to each SEP identified in Paragraph 23:

- (i) A detailed description of each SEP as implemented annually;
- (ii) A brief description of any significant operating problems encountered, including any that had an impact on the environment, and the solutions for each problem;
- (iii) Initial capital costs and annual operating costs of the SEPs, to be itemized and documented by copies of purchase orders, receipts, or canceled checks; and
- (iv) A qualitative description of the environmental benefits resulting from the implementation of each SEP and the sum of the quantity of SO₂ emissions reduced as follows: (1) a calculation of the quantity of SO₂ emissions reduced from the FCCU when the annual SO₂ emissions from the FCCU are compared to the average quantity of SO₂ emitted from the FCCU in calendar years 1997-1999, and (2) the annual SO₂ emissions from the burning of Fuel Oil in process heaters and boilers are compared to the average quantity of SO₂ emitted from the burning of Fuel Oil in these process heaters and boilers in calendar years 1997-1999.

b. Review of Annual Reports U.S. EPA shall, within sixty (60) Days from the receipt of the Annual SEP Report, identify concerns with the Report, if any. If U.S. EPA identifies any concerns with the Annual SEP Report, then Murphy may revise the Annual SEP Report to address said concerns within thirty (30) Days from its receipt.

U.S. EPA does not, however, by identifying or failing to identify, any concerns with the Annual SEP Report, warrant or aver in any manner that the SEP Completion Report required by Paragraph 26 below will be accepted or rejected.

26. **SEP Completion Report** Murphy shall submit a SEP Completion Report to U.S. EPA and WDNR. The SEP Completion Report shall be deemed submitted on the date of the postmark. The SEP Completion Report shall contain the following information:

- a. A detailed description of each SEP as implemented;
- b. Initial capital costs and annual operating costs of each SEP, to be itemized and documented by copies of purchase orders, receipts, or canceled checks;
- c. Certification that each SEP has been fully implemented pursuant to the provisions of this Consent Decree; and
- d. A qualitative description of the environmental benefits resulting from implementation of each SEP and the quantity of the SO₂ emission reduction over the pendency of this Consent Decree.

27. **SEP Completion Report Acceptance/Rejection** After review of the SEP Completion Report, U.S. EPA shall exercise one of the following options:

- a. Accept the SEP Completion Report and provide written notification of such acceptance to Murphy; or
- b. Reject the SEP Completion Report by notifying Murphy in writing of any deficiencies in the Completion Report and providing it with thirty (30) additional Days to correct any deficiencies from the date of Murphy's receipt of such notice. In the

event Murphy does not correct the perceived deficiencies within the time provided or believes the SEP Completion Report to be in accordance with Paragraph 26 of this Consent Decree, Murphy or the United States may seek resolution of the dispute in accordance with Section XIV of this Consent Decree (Retention of Jurisdiction/Dispute Resolution). In such case, the first Day of any failure or refusal to comply shall be the sooner of the date Murphy notifies the United States it will not remedy the noted deficiencies, or thirty-one (31) Days after Murphy's receipt of U.S. EPA's rejection of the SEP Completion Report.

28. **Public Statements** Murphy agrees that any public oral or written statements, including but not limited to advertisements, press releases, speeches, annual reports, websites, facility tours, or meetings (other than with employees, contractors, and/or vendors), made by Murphy, or its representatives, regarding or otherwise referencing any SEP required by Paragraph 23 of this Consent Decree, must clearly state that the SEPs are being undertaken as part of a Consent Decree to resolve its violations of the CAA.

29. **SEP Certification** All SEP reports required to be submitted to U.S. EPA and/or WDNR under this Consent Decree must be certified in accordance with Paragraph 46.

VI. PERMITTING

30. **Permitting Obligations** Except for the activities required by Paragraphs 11.a., 11.c., 14, 16.a., and 16.b. above, this Paragraph shall apply to all permits necessary to comply with the terms and provisions of this Consent Decree and Murphy shall

comply with all applicable federal and/or State permitting requirements for the SRU including, without limitation, submission of a PSD permit application to WDNR in accordance with Paragraph 10 above. The installation of pollution control equipment/measures required by Paragraphs 11.a., 11.c., 14, 16.a., and 16.b. are injunctive relief required to remedy the historical Major Modifications. In accordance with Paragraph 15 of this Consent Decree, any permit application shall also state that the SRU is subject to NSPS Subparts A and J. Murphy shall also include as part of any permit application a request to meet all applicable emission limits in this Consent Decree. This Consent Decree is not and shall not be construed to be a permit or a ruling on a permit issued pursuant to any federal or State statute or regulation, nor does compliance with its terms guarantee compliance with any applicable law or regulation other than those specifically addressed herein. This Consent Decree in no way affects or relieves Murphy of its responsibility to comply with any applicable Federal, State, or local law, regulation, or permit.

31. **Construction** Murphy shall apply for and obtain from WDNR any permits necessary to construct or modify any emissions unit to implement either of the SEPs required by Paragraph 23 of this Consent Decree.

32. **Operation** Murphy shall apply for any operation permits that are required at least four (4) months prior to the expiration date of any construction permit obtained to perform work required under this Consent Decree. Any application for an operation permit shall contain the same emission limitations set forth in Paragraphs

11.b.(i) and 11.c., 16, and 23 of this Consent Decree.

33. **Waiver of Permit Appeal**

a. Murphy hereby specifically waives its right to appeal any of the following permit conditions contained in any permit issued by WDNR to comply with the terms and conditions of this Consent Decree:

(i) The applicability of NSPS Subparts A and J to the Refinery's SRU;

(ii) That BACT will at least meet the pollution control requirements for the SRU set forth in Subparagraphs 11.b.(i) and 11.c. above, provided, however, that (a) this waiver does not apply to start-up, shut-down, or malfunctions provisions contained in its PSD permit, if any; and (b) this waiver does not apply to the sulfur input level at which the SO₂ emission limitation applies if such level is established in the permit at (1) less than 5 long tons per Day of Fresh Feed for an SRU sulfur input capacity of 22.8 long tons per day of Fresh Feed and (2) less than 6 long tons per day of Fresh Feed for an SRU sulfur input capacity of 30 long tons per day of Fresh Feed.

(iii) Sulfur dioxide emission limitations for the SEPs no more stringent than the limitations set forth in Paragraphs 23.a.(i) and 23.b.(i).

b. An appeal by Murphy of any condition in any permit required to comply with this Consent Decree shall not relieve Murphy of its obligation to comply with the compliance date(s) set forth in Paragraphs 11.a., 11.b., 11.c, and 16 above, and will not constitute a Force Majeure event under Section XII of this Consent Decree (Force Majeure).

c. Murphy reserves the right to appeal any other condition included in a permit required to be obtained pursuant to this Consent Decree, other than provisions agreed to by the Parties in accordance with the terms and conditions of this Decree.

34. **Potential Emission Credits** This Paragraph sets forth the exclusive process for generating the NO_x emission reductions that may be achieved by Section V of this Consent Decree as credits for PSD netting. The provisions of this Paragraph are for purposes of this Consent Decree only and, except as hereinafter provided, may not be used or relied upon by Murphy or any other entity, for any purpose other than as set forth herein.

a. **Creditable Reductions** Murphy may not generate, use, sell or trade any credits resulting from the SO₂ emission reductions resulting from any Work performed pursuant to this Consent Decree in any emissions banking, trading or netting program for PSD, Minor NSR, or any PSD or Minor NSR permit or permit proceeding. Nothing in this Paragraph shall be construed to limit the generation and use of emissions credits respecting NO_x reductions established under Section V of the Consent Decree. For any NO_x emission reductions to be applied or used, Murphy must make any such emissions reductions federally enforceable. Furthermore, nothing in this Paragraph 34 is intended to obviate Murphy's obligation to comply with 40 C.F.R. Parts 51 and 52 , including rules pertaining to PSD netting or to comply with the Wisconsin SIP-approved PSD Program.

b. **Reporting of Emission Reductions** Murphy will submit to U.S. EPA and

WDNR an annual report regarding the generation and use of emission reduction credits under this Paragraph, if any such credits are generated or used, during the reporting period. During the pendency of this Consent Decree, in accordance with the annual reporting requirements set forth in Paragraph 45 below, each such report shall contain the following information for the Refinery on a cumulative basis:

(i) The quantity of credits generated since the Entry Date of the Consent Decree and the emission unit(s) generating such credits, the date on which those credits were generated, and the basis for those determinations; and

(ii) The quantity of credits used since the Entry Date of the Consent Decree and the emission units to which those credits were applied.

VII. CIVIL PENALTIES

35. Murphy shall pay a civil penalty of five million five hundred thousand dollars (\$5,500,000). The civil penalty shall be made payable as follows:

a. Murphy shall pay the United States a civil penalty in the amount of four million seven hundred fifty thousand dollars (\$4,750,000) within thirty (30) Days of the Entry Date of the Consent Decree. Murphy shall make the federal civil penalty payment by FedWire Electronic Funds Transfer to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures which may be obtained from the United States Attorney's Office. Payment shall reference U.S. Attorney's Office case number 1999v00389, and U.S. EPA and DOJ case number 90-7-1-06523.

b. Murphy shall, within thirty (30) Days of the Entry Date of the Consent Decree, pay the State of Wisconsin a civil penalty in the amount of seven hundred fifty thousand dollars (\$750,000), which sum shall be comprised of forfeitures of \$563,909.77, a 23% penalty assessment of \$129,699.25, and a 10% environmental assessment of \$56,390.98. Such payment shall be made by check payable to the State of Wisconsin and mailed to:

Assistant Attorney General Shari Eggleson
Wisconsin Department of Justice
P.O. Box 7847
Madison, WI, 53707

36. Murphy shall provide written notice, at the addresses specified in Section XVI of this Consent Decree (Notification), that such payment was made in accordance with Paragraph 35.

37. Upon entry, this Consent Decree shall constitute an enforceable judgment for purposes of post-judgment collection, in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001-3308, and other applicable authority. The United States and the State shall be deemed judgment creditors for purposes of payment of any unpaid amounts of the civil penalties, stipulated penalties and interest.

38. Civil penalty payments pursuant to this Consent Decree are penalties within the meaning of section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21, and are not tax deductible expenditures for purposes of federal law.

VIII. STIPULATED PENALTIES

39. **Stipulated Penalties for Non-compliance** After the Entry Date of the Consent Decree, upon written demand, Murphy shall pay stipulated penalties to the United States and/or the State for each failure by Murphy to comply with the terms of this Consent Decree as provided herein. Payment by Murphy of stipulated penalties shall not in and of itself constitute an admission of a violation of the Consent Decree. The amount of such stipulated penalties shall be as follows:

a. **Compliance with PSD Program for SRU**

(i) For exceeding the SRU maximum sulfur input limitation as required by Paragraph 11.b.(ii):

<u>Days of Violation</u>	<u>Penalty per Day</u>
1 st through 10 th Day in any year	\$3,500
11 st through 20 th Day in any year	\$5,000
Beyond 21 th Day in any year	\$7,500

(ii) For failure to comply with the SO₂ emission limitation for the SRU, as set forth in Subparagraph 11.b.(i), per Day, except, for purposes of this Consent Decree only, during periods of Startup, Shutdown, or Malfunction:

<u>Days of Violation</u>	<u>Penalty per Day</u>
1 st through 10 th Day in any year	\$3,500
11 st through 20 th Day in any year	\$5,000
Beyond 20 th Day in any year	\$7,500

(iii) For failure to reroute its sulfur pit emissions as required by

Subparagraphs 11.c. and 16.b.:

<u>Days of Violation</u>	<u>Penalty per Day</u>
1 st through 10 th Day in any year	\$2,000
11 st through 20 th Day in any year	\$3,500
Beyond 20 th Day in any year	\$5,000

(iv) For failure to timely submit process flow diagrams, piping and instrumentation diagrams, and a list of any equipment to be installed as required by Paragraph 13, per requirement, per Day:

<u>Period of Delay</u>	<u>Penalty per Day</u>
1 st through 30 th Day after deadline	\$500
31 st through 60 th Day after deadline	\$1,000
Beyond 60 th Day after deadline	\$2,000

(v) For failure to timely install and begin operation of Low NOx Burner on the new Tail Gas combustor as required by Paragraph 14:

<u>Period of Delay</u>	<u>Penalty per Day</u>
1 st through 10 th Day after deadline	\$1,500
11 st through 20 th Day after deadline	\$2,500
Beyond 20 th Day after deadline	\$5,000

b. **Compliance with NSPS Requirements for SRU**

(i) For failure to comply with the NSPS reporting and recordkeeping requirements as required by Paragraph 15, the penalties shall be per Day, per requirement:

<u>Days of Violation</u>	<u>Penalty per Day</u>
1 st through 30 th Day	\$500
31 st through 60 th Day	\$1,000
Beyond 60 th Day	\$2,000

(ii) In addition to any stipulated penalty assessed pursuant to Subparagraph 39.a.(ii) above, for failure to comply with the NSPS Subpart J SO₂ emission limitation for the SRU, as set forth in Subparagraph 16.a., for which the specified rolling average on that Day exceeds the applicable limit, but does not yet qualify as a TG Incident:

<u>Days of Violation</u>	<u>Penalty per Day</u>
1 st through 10 th Day	\$2,500
11 st through 20 th Day	\$3,750
Beyond 20 th Day	\$5,000

(iii) In addition to any stipulated penalties assessed pursuant to Subparagraphs 39.a.(ii) and 39.b.(ii) above, for SO₂ emissions that qualify as a TG Incident:

<u>Days of Violation</u>	<u>Penalty per Day</u>
1 st through 10 th Day	\$2,500

11 st through 20 th Day	\$3,750
Beyond 20 th Day	\$5,000

(iv) For failure to install the necessary pollution control

equipment/measures as required by Subparagraphs 11.a. and 16.b, per Day:

<u>Period of Delay</u>	<u>Penalty per Day</u>
1 st through 10 th Day after deadline	\$2,500
11 st through 20 th Day after deadline	\$3,750
Beyond 20 th Day after deadline	\$5,000

(v) For failure to timely submit excess emission reports as required

by Subparagraph 16.c.(ii):

<u>Period of Delay</u>	<u>Penalty per Day</u>
1 st through 30 th Day after deadline	\$500
31 st through 60 th Day after deadline	\$1,000
Beyond 60 th Day after deadline	\$2,000

(vi) For failure to conduct SRU emissions monitoring with CEMS in

accordance with NSPS requirements as required by Subparagraph 16.c.(ii), per CEMS:

<u>Period of Violation</u>	<u>Penalty per Day</u>
1 st through 10 th Day in any year	\$2,500
11 st through 20 th Day in any year	\$5,000
Beyond 20 th Day in any year	\$7,500

(vii) For failure to develop the SRU Plan as required by Paragraph

16.d.:

<u>Period of Delay</u>	<u>Penalty per Day</u>
1 st through 30 th Day	\$1,500
31 st Day through 60 th Day	\$3,000
Beyond 60 th Day	\$5,000

c. **Compliance with Wisconsin SIP - LDAR**

(i) For failure to develop and maintain a written refinery-wide program for LDAR compliance as required by Subparagraph 17.a.:

<u>Period of Delay</u>	<u>Penalty per Day</u>
1 st through 30 th Day after deadline	\$500
31 st through 60 th Day after deadline	\$1,500
Beyond 60 th Day	\$2,500

(ii) For failure to implement the LDAR training program required by Subparagraph 17.b., per requirement, per Day:

<u>Period of Delay</u>	<u>Penalty per Day</u>
1 st through 30 th Day after deadline	\$500
31 st through 60 th Day after deadline	\$1,000
Beyond 60 th Day	\$2,000

(iii) For failure to conduct quarterly monitoring as required by Subparagraph 17.c., \$10,000 per month, per process unit.

(iv) For failure to implement the QA/QC procedures set forth in

Subparagraph 17.d., \$10,000 per month.

(v) For failure to timely conduct either of the third-party audits required by Subparagraph 17.e., \$15,000 per month, per audit.

(vi) For failure to implement any actions necessary to correct non-compliance as required in Subparagraph 17.e.(i):

<u>Period of Delay</u>	<u>Penalty per Day</u>
1 st through 30 th Day after deadline	\$1,500
31 st through 60 th Day after deadline	\$3,000
Beyond 60 th Day	\$5,000

(vii) For failure to initiate an internal leak rate definition as required by Subparagraph 17.f.(i), \$10,000 per month, per process unit.

(viii) For failure to initiate first attempt at repair on valves program as required by Subparagraph 17.g., \$5,000 per month.

(ix) For failure to use dataloggers or maintain electronic data as required by Subparagraph 17.h, \$5,000 per month.

(x) For failure to designate an individual accountable for LDAR performance as required in Subparagraph 17.j., or for failure to implement the maintenance tracking program in Subparagraph 17.k., \$10,000 per month.

(xi) For failure to conduct the calibration drift assessments or remonitor components, if required, based on calibration drift assessments as required

by Subparagraph 17.m., \$100 per missed calibration event and \$100 per missed re-monitored component.

(xii) For failure to attempt to repair valves based on the delay of repair standards set forth in Subparagraph 17.n., \$5,000 per valve.

(xiii) For failure to submit the written reports required by Subparagraph 17.o., \$1,000 per week per report.

(xiv) If it is determined through an U.S. EPA or WDNR investigation that Murphy has failed to include all valves and pumps subject to quarterly monitoring as required by Subparagraph 17.c., Murphy shall pay \$175 per component that it failed to include.

d. **Compliance with SPCC Requirements**

(i) For failure to comply in a timely manner with any requirement of Paragraph 18:

<u>Period of Delay</u>	<u>Penalty per Day</u>
1 st through 30 th Day	\$500
31 st through 60 th Day	\$1,000
Beyond 60 Days	\$1,500

(ii) For failure to comply in a timely manner with any requirement of Paragraph 20:

<u>Period of Delay</u>	<u>Penalty per Day</u>
1 st through 30 th Day	\$500

31 st through 60 th Day	\$1,000
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Beyond 60 Days	\$1,500
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(iii) For failure to comply in a timely manner with any requirement of

Paragraph 21:

<u>Period of Delay</u>	<u>Penalty per Day</u>
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1 st through 30 th Day	\$500
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31 st through 60 th Day	\$1,000
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Beyond 60 Days	\$1,500
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(iv) For failure to comply in a timely manner with any requirement of

Paragraph 22:

<u>Period of Delay</u>	<u>Penalty per Day</u>
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1 st through 30 th Day	\$500
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31 st through 60 th Day	\$1,000
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Beyond 60 Days	\$1,500
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e. **Supplemental Environmental Project Requirements**

(i) Failure to install equipment necessary to allow use of SO_x transfer

catalyst as required by Subparagraph 23.a.:

<u>Period of Delay</u>	<u>Penalty per Day</u>
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1 st through 30 th Day after deadline	\$750
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31 st through 60 th Day after deadline	\$1,500
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Beyond 60th Day after deadline \$3,500

(ii) Failure to timely limit the SO₂ emissions to the level required in Subparagraph 23.a.(i), \$25,000 per 12-month rolling average period.

(iii) Failure to timely limit the SO₂ emissions to the level required in Subparagraph 23.b.(i), \$50,000 per 12-month rolling average period.

(iv) For failure to sample and analyze the Fuel Oil as required by Subparagraph 23.b.(ii)(a) above, \$2,000 per occurrence.

(v) For failure to comply with Paragraph 32 of the Consent Decree regarding public statements about SEPs, and such non-compliant statement has not been promptly corrected in the same or equivalent media/forum and with the same or equivalent prominence, \$10,000 per occurrence and the obligation to retract the noncomplying statement and issue a new statement in compliance with Paragraph 28.

(vi) For failure to timely submit any SEP report as required by Paragraph 25:

<u>Period of Delay</u>	<u>Penalty per Day</u>
1 st through 30 th Day after deadline	\$500
31 st through 60 th Day after deadline	\$1,000
Beyond 60 th Day after deadline	\$2,000

f. For failure to timely submit any report as required by Subparagraph 34.b.:

<u>Period of Delay</u>	<u>Penalty per Day</u>
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1 st through 30 th Day after deadline	\$500
31 st through 60 th Day after deadline	\$1,000
Beyond 60 th Day after deadline	\$2,000

g. For failure to submit any annual report as required by Paragraph 45:

<u>Period of Delay</u>	<u>Penalty per Day</u>
1 st through 30 th Day after deadline	\$500
31 st through 60 th Day after deadline	\$1,000
Beyond 60 th Day	\$2,000

h. For failure to certify, in accordance with Paragraph 46, any report required to be certified under this Consent Decree:

<u>Period of Delay</u>	<u>Penalty per Day</u>
1 st through 30 th Day after deadline	\$1,000
31 st through 60 th Day after deadline	\$2,000
Beyond 60 th Day	\$3,000

i. For failure to retain any reports, records, or documents as required by Paragraph 47, \$5,000 per violation, unless Murphy demonstrates that the underlying information was otherwise made readily available at the Refinery.

40. **Stipulated Penalties for Failure to Pay Civil Penalty or Escrow**

Stipulated Penalties For failure to pay the civil penalty as specified in Section VII of this Consent Decree, Murphy shall be liable for \$30,000 per Day, plus interest on the amount overdue at the rate specified in 28 U.S.C § 1961(a). For failure to escrow stipulated penalties as required by Paragraph 42 of this Consent Decree, Murphy shall

be liable for \$2,500 per Day, plus interest on the amount overdue at the rate specified in 28 U.S.C. § 1961(a).

41. **Payment of Stipulated Penalties** Murphy shall pay such stipulated penalties if written demand is made by the United States and/or the State, no later than thirty (30) Days after it receives such demand. The United States and the State must consult prior to making a written demand for stipulated penalties, and they will not seek both stipulated penalties and civil penalties for the same violation of this Consent Decree, including the same Days of violation. If the United States and the State disagree as to whether to demand stipulated penalties or seek statutory penalties, the final decision of the United States shall be binding. Any stipulated penalty demand will identify to which government agency or agencies payment must be made. In the event both the United States and the State make a written demand for stipulated penalties for the same violation of the Consent Decree, including the same Days of violation, then the stipulated penalties shall be apportioned between the United States and the State, 50% to each. Payments shall be made to either the United States or the State, or apportioned between the two, according to the procedures set forth in Section VII (Civil Penalties) of this Decree. Any demand for the payment of stipulated penalties will identify the particular violation(s) to which the stipulated penalty relates, the dates of violation, the stipulated penalty amount the agency is demanding for each violation, the calculation method underlying the demand, and the grounds upon which the demand is based. The United States may, in its unreviewable

discretion, waive all or any portion of stipulated penalties due under this Consent Decree.

42. **Stipulated Penalties Dispute** Should Murphy dispute its obligation to pay part or all of a stipulated penalty, it may avoid the imposition of the stipulated penalty for failure to pay a penalty due to the United States and/or the State, by placing the disputed amount demanded in a commercial escrow account, not to exceed \$100,000 per related series of violations, pending resolution of the matter and by invoking the dispute resolution provisions of Section XIV within the time provided in Paragraph 41 for payment of stipulated penalties. If the dispute is thereafter resolved in Murphy's favor, the escrowed amount plus accrued interest shall be returned to it, otherwise the agency(ies) shall be entitled to the escrowed amount that was determined to be due by the Court, plus the interest that has accrued on such amount. In the event the amount of stipulated penalties due exceeds the escrowed amount, Murphy shall pay the remaining stipulated penalties, plus interest on the amount in accordance with Section IX of this Consent Decree, within thirty (30) Days of the Court's decision. The United States and the State reserve the right to pursue any other non-monetary remedies to which they are entitled, including but not limited to, additional injunctive relief for Murphy's violations of this Consent Decree.

43. **Stipulated Penalties During Dispute Resolution** Stipulated penalties shall continue to accrue until Murphy comes into compliance with the terms of this Consent Decree that are the subject of the written demand for stipulated penalties made pursuant to Paragraph 41 above. However, if Murphy files a petition with the

Court appealing either the United States' or the State's Statement of Position regarding the dispute in accordance with Section XIV (Dispute Resolution) of this Consent Decree, accrual of stipulated penalties shall be stayed from the date of the filing of the petition until the Court issues its decision on the dispute.

IX. INTEREST

44. Murphy shall be liable for interest on any past due balance of the civil penalty specified in Section VII and for interest on any past due balance of stipulated penalties to be paid in accordance with Section VIII. All such interest shall accrue at the rate established pursuant to 28 U.S.C. § 1961(a) -- *i.e.*, a rate equal to the coupon issue yield equivalent (as determined by the Secretary of Treasury) of the average accepted auction price for the last auction of 52-week U.S. Treasury bills settled prior to the Entry Date of the Consent Decree. Interest shall be computed daily and compounded annually. Interest shall be calculated from the date such penalty payment is due under this Consent Decree through the date of actual payment. For purposes of this Paragraph 44, interest pursuant to this Paragraph will cease to accrue on the amount of any penalty at the time payment is made into an interest bearing escrow account as contemplated by Section VII (Civil Penalty) and Section VIII (Stipulated Penalties) of this Consent Decree. Monies timely paid into escrow shall not be considered to be an unpaid balance under this section.

X. REPORTING AND RECORD RETENTION

45. **Annual Reporting Requirements** Beginning March 15, 2003, and on March 15 of each successive year during the pendency of this Consent Decree, Murphy

shall submit a report to U.S. EPA and WDNR documenting its activities pursuant to this Consent Decree for the preceding calendar year.

46. **Report Certification** The Annual Consent Decree reports required by Paragraph 45 above, and any other report required under this Consent Decree to be certified pursuant to this Paragraph 46, shall be certified by the Refinery manager or other corporate officer responsible for environmental management and compliance, and shall include the following statement:

I certify under penalty of law that this document and any attachments to it were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

47. **Document Retention** During the pendency of this Consent Decree and continuing until one (1) year after the date of termination of this Consent Decree by the Court, Murphy shall maintain legible copies of any reports or records submitted to U.S. EPA and/or WDNR pursuant to this Consent Decree, and any underlying data or documents which support the reports or records. Murphy shall provide the documents to U.S. EPA and/or WDNR within thirty (30) Days of receiving a request for such information.

XI. RIGHT OF ENTRY

48. Any authorized representative of U.S. EPA and WDNR, including

contractors retained by the agencies, upon presentation of credentials, shall have a right to enter the Refinery at any reasonable time, for purposes of monitoring compliance with the provisions of this Consent Decree (including Section V (SEPs)), including inspecting plant equipment and inspecting and copying records maintained by Defendant as required by this Consent Decree. Nothing in this Consent Decree shall limit the authority of U.S. EPA or WDNR to conduct any inspections or tests under any applicable Federal or State law or regulation.

XII. FORCE MAJEURE

49. Murphy shall perform the actions required under this Consent Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the control of Murphy, including its employees, agents, consultants, and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, *inter alia*, increased costs of performance or changed economic circumstances. Unreasonable delay by WDNR in issuing a permit required under this Consent Decree shall constitute a Force Majeure event, provided that Murphy timely submitted the permit application and all necessary information.

50. If any event occurs which causes or may cause a delay or impediment to performance in complying with any provision of this Consent Decree, Murphy shall

notify the United States and the State in writing as soon as practicable, but in any event within twenty (20) Days of when Murphy first knew of the event or should have known of the event by the exercise of due diligence. In this notice, Murphy shall specifically reference this Paragraph 50 of this Consent Decree, and shall describe the anticipated length of time the delay may persist, the cause or causes of the delay and the measures taken or to be taken by Murphy to prevent or minimize the delay, and the schedule by which those measures shall be implemented. Murphy shall adopt all reasonable measures to avoid or minimize such delays. The notice required by this Section shall be effective upon the mailing of the same by overnight mail or certified or registered mail, return receipt requested, to United States and the State as specified in Section XVI (Notification).

51. Failure by Murphy to substantially comply with the notice requirements of Paragraph 50 as specified above shall render this Section XII (Force Majeure) voidable by the United States and the State as to the specific event for which Murphy has failed to comply with such notice requirement, and, if voided, is of no effect as to the particular event involved.

52. The United States and the State shall notify Murphy in writing regarding its position on Murphy's claim of a delay or impediment to performance within thirty (30) Days of receipt of the Force Majeure notice provided under Paragraph 50. In the event that the United States and the State do not agree, the position of the United States on the Force Majeure claim shall become the Plaintiffs' position.

53. If the Plaintiffs agree that the delay or impediment to performance has been or will be caused by a Force Majeure event, the Parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay by a period equivalent to the delay actually caused by such circumstances. Such stipulation shall be filed with the Court as a modification to this Consent Decree pursuant to the procedures established by Section XIX (Modification). Murphy shall not be liable for stipulated penalties for the period of any such delay.

54. If the Plaintiffs do not accept Murphy's claim of Force Majeure, Murphy must submit the matter to the Court for resolution to avoid payment of stipulated penalties, by filing a petition for determination with the Court within twenty (20) Days of the date of receipt by Murphy of the Plaintiffs' position. Plaintiffs shall have thirty (30) Days from receipt of Murphy's petition within which to file their response to the petition. If the Court determines that the delay or impediment to performance has been or will be caused by a Force Majeure event, Murphy shall be excused as to that event(s) and delay (including stipulated penalties), for a period of time equivalent to the delay caused by such circumstances.

55. Murphy shall bear the burden of proving that any delay of any requirement(s) of this Consent Decree was caused by or will be caused by a Force Majeure event. Murphy shall also bear the burden of proving the duration and extent of any delay(s) attributable to such circumstances. An extension of one compliance date based on a particular event may, but does not necessarily, result in an extension of

a subsequent compliance date or dates.

56. Notwithstanding any other provision of this Consent Decree, this Court shall not draw any inferences nor establish any presumptions adverse to any Party as a result of Murphy serving a Force Majeure Notice or the Parties' inability to reach agreement.

57. As part of the resolution of any matter submitted to this Court under this Section XII, the Parties, by agreement, or the Court, by order, may, in appropriate circumstances, extend or modify the schedule for completion of Work under this Consent Decree to account for the delay in the Work that occurred as a result of any delay or impediment to performance agreed to by Plaintiffs or approved by this Court. Murphy shall be liable for stipulated penalties for its failure thereafter to complete the Work in accordance with the extended or modified schedule, unless performance with the extended or modified schedule is excused under this Consent Decree.

XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

58. Performance by Murphy of its obligations under this Consent Decree shall fully satisfy all civil liability of Murphy to the United States for the violations alleged in the Complaint and Amended Complaint filed by the United States in this action, for the violations found by the Court in its Opinions and Orders issued May 18, 2001, as amended, and August 1, 2001, as amended, for the violations specifically alleged in the Federal NOV's and Federal FOV's, and for the violations alleged in the Complaint in Intervention filed by the State in this action. This release applies to violations prior to the lodging of this Consent Decree, except that it applies to the

specific SRU PSD and NSPS violations found by the Court up to the compliance dates set forth in Sections IV.A. and IV.B. above, including any extension(s) or modification(s) pursuant to Sections XII (Force Majeure), XIV (Dispute Resolution), and XIX (Modification). Nothing in this Consent Decree is intended, or shall be construed, to operate in any way to resolve any other civil liability, or any criminal liability of Murphy.

59. Performance by Murphy of its obligations under this Consent Decree shall fully satisfy all civil liability of Murphy to the State for the violations alleged in the Complaint and Amended Complaint filed by the United States in this action, for the violations found by the Court in its Opinions and Orders issued May 18, 2001, as amended, and August 1, 2001, as amended, for the State NOVs and LONs issued by WDNR, and for the violations alleged in the Complaint in Intervention filed by the State in this action and in the Complaint filed by the State in the State Court Case. This release applies to violations prior to the lodging of this Consent Decree, except that it applies to the specific SRU PSD and NSPS violations found by the Court up to the compliance dates set forth in Sections IV.A. and IV.B. above, including any extension(s) or modification(s) pursuant to Sections XII (Force Majeure), XIV (Dispute Resolution), and XIX (Modification). Nothing in this Consent Decree is intended, or shall be construed, to operate in any way to resolve any other civil liability, or any criminal liability of Murphy.

60. Except as specified in Paragraph 58, the United States reserves all rights

to obtain penalties or further injunctive relief under the CAA, CWA, RCRA, or any other Federal statutes or regulations implementing those statutes, including, but not limited to, criminal punishment under CAA Section 113(c), 42 U.S.C. § 7413, CWA Section 309(c), 33 U.S.C. § 1319(c), RCRA Section 3008(d), 42 U.S.C. § 6928(d). This Consent Decree does not address, and the United States expressly reserves its right to bring claims for, violations at the Refinery after the lodging of this Consent Decree, except for the SRU PSD and NSPS violations referenced above in Paragraph 58, nor does it address any past violations other than the specific violations alleged in the Complaint, the Amended Complaint, the Complaint-in-Intervention, the Federal NOVs, and the Federal FOVs. Murphy reserves all rights and defenses that it may have under state and federal law, or at common law, to any rights and claims reserved by the United States.

61. Except as specified in Paragraph 59, the State of Wisconsin reserves all rights to obtain penalties or further injunctive relief under the CAA, RCRA, or any other federal or state statutes or regulations implementing those statutes, including, but not limited to CAA Section 113(c), 42 U.S.C. § 7413, CWA Section 309(c), 33 U.S.C. 1319(c), RCRA Section 3008(d), 42 U.S.C. § 6928(d) and Wis. Stats. chs. 285, 291 and 299, and Wis. Admin. Code chs. 405, 406, 420, 431, 439, 615 and 630. This Consent Decree does not address, and the State expressly reserves its right to bring claims for, violations at the Refinery after the lodging of this Consent Decree, except for the SRU PSD and NSPS violations referenced above in Paragraph 59, nor does it address any past violations other than the specific violations alleged in the Complaint, the

Amended Complaint, the Complaint-in-Intervention and the Complaint filed by the State in the State Court Case, and the State NOV's, and LONs. Murphy reserves all rights and defenses that it may have under state and federal law, or at common law, to any rights and claims reserved by the State.

62. Murphy relinquishes its right to appeal the Court's Opinions and Orders issued May 18, May 24, May 25, June 5, June 6, June 11, July 31 and August 1, 2001, as amended .

63. The release of civil liability set forth in this Section extends only to Defendant and does not extend to any other person; provided, however, that the release of civil liability set forth in this Section shall also apply to Defendant's officers, directors, and employees, but only to the extent that the civil liability of the officer, director, or employee is based on said person's status as an officer, director, or employee of Defendant.

64. The United States and the State reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree under applicable law.

XIV. RETENTION OF JURISDICTION/DISPUTE RESOLUTION

65. This Court shall retain jurisdiction over this case for the purposes of implementing and enforcing the terms and conditions of this Consent Decree and for the purpose of adjudicating all disputes among the Parties that may arise under the provisions of this Consent Decree, and until this Consent Decree terminates in accordance with Section XX of this Consent Decree (Termination).

66. Unless otherwise set forth in this Consent Decree, the dispute resolution procedure provided by this Section XIV shall be available to resolve all disputes arising under this Consent Decree.

67. The dispute resolution procedure required herein shall be invoked upon providing written notice to the Parties to this Consent Decree and advising them of a dispute pursuant to this Section XIV. The notice shall describe the nature of the dispute, and shall state the noticing Party's position with regard to such dispute. The Parties receiving such a notice shall acknowledge receipt of the notice and the Parties shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) Days from the receipt of such notice.

68. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the Parties, which shall be conducted in good faith. Such period of informal negotiations shall not extend beyond thirty (30) calendar Days from the date of the first meeting between the Parties unless they agree that this period should be extended.

69. In the event that the Parties are unable to reach an agreement during such informal negotiation period, the United States or the State shall provide all Parties with a written summary of its position regarding the dispute.

70. Murphy shall abide by Plaintiffs' position unless it invokes formal dispute resolution by submitting to the United States and the State a statement setting forth the matter in dispute, any action deemed necessary by Murphy to resolve the dispute, and any factual analysis, data, declarations, or opinions supporting Murphy's

position. The United States and/or the State may submit a response on behalf of Plaintiffs setting forth their position on the dispute, any actions deemed necessary to resolve the dispute, and any factual analysis, data, declarations, or opinions supporting their position. If needed, Murphy may submit a reply.

71. A Record of Decision of the dispute shall be maintained by U.S. EPA or WDNR and shall consist of the documents set forth in Paragraph 70 above, and the Plaintiffs' Statement of Final Position, and documents in support thereof, if any.

72. In the event that the United States and the State make differing determinations or take differing action that affect Murphy's rights or obligations under this Consent Decree, the final decision(s) of the United States shall be binding and shall become the Plaintiffs' Final Position.

73. The Plaintiffs' Final Position shall be considered binding on Murphy unless, within thirty (30) calendar days of Murphy's receipt of the Plaintiffs' Final Position, it files with the Court a petition which describes the nature of the dispute. Only data or information that is contained in the Record of Decision may be relied on or referred to by Defendant in its petition regarding the dispute, or subsequent proceeding, if any, regarding the dispute; provided, however, that any Party to this Consent Decree may petition the Court to allow, for good cause shown, consistent with federal administrative law, additional information to be submitted to the Court to supplement the Record of Decision, and/or to allow oral argument to the Court regarding the dispute. The United States and/or the State shall respond to the petition within forty-five (45) Days of receipt of Defendant's petition.

74. In resolving any dispute between the Parties, the Plaintiffs' Final Position set forth in the Record of Decision shall be upheld by the Court if it is supported by a preponderance of the evidence in the Record of Decision. Defendant shall have the burden of demonstrating that the Plaintiffs' Final Position is not supported by a preponderance of the evidence in the Record of Decision.

75. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set forth in this Section XIV may be shortened upon motion of one of the Parties to the dispute.

76. The Parties do not intend the invocation of this Section XIV by a Party to cause the Court to draw any inferences nor establish any presumptions adverse to a Party as a result of invocation of this Section.

77. As part of the resolution of any dispute submitted to dispute resolution, the Parties, by agreement, or this Court, by order, may, in appropriate circumstances, extend or modify the schedule for completion of Work under this Consent Decree to account for the delay in the Work that occurred as a result of dispute resolution. Murphy shall be liable for stipulated penalties for its failure thereafter to complete the Work in accordance with the extended or modified schedule.

XV. PUBLIC DOCUMENTS

78. All information and documents submitted by Murphy to the United States and/or the State shall be subject to public inspection, unless subject to legal privileges and/or supported as business confidential information by Murphy in

accordance with 40 C.F.R. Part 2, and Wis. Admin. Code § NR 2.

XVI. NOTIFICATION

79. Unless otherwise provided herein, the Parties to this Consent Decree hereby agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure, including service of a summons.

80. Except where actual receipt of notice is provided for as the effective date of service in any provision of this Consent Decree, notifications to or communications with the Parties shall be deemed submitted on the date they are postmarked and sent by U.S. Mail, postage pre-paid, except for notices under Section XII (Force Majeure) and Section XIV (Retention Jurisdiction/Dispute Resolution), which shall be sent by overnight mail or by certified or registered mail, return receipt requested.

81. Except as otherwise provided herein, all reports, notices and communications required under this Consent Decree shall be made to the Parties through each of the following persons, who are authorized to accept service of process, and to be addressed as follows:

To the United States Environmental Protection Agency:

Regional Counsel
US Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Mail Code C-14J

Chicago, IL 60604

Chief
Air Enforcement and Compliance Assurance Branch
US Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Mail Code AE-17J
Chicago, IL 60604

To the United States Department of Justice:

Chief, Civil Division
United States Attorney's Office
660 W. Washington Avenue
Suite 200
P.O. Box 1585
Madison, WI 53701-1585

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611 - Ben Franklin Station
Washington, D.C. 20044

To Wisconsin Department of Natural Resources:

Air Management Program
Department of Natural Resources
Superior Area Office
Northern Region
1401 Tower Avenue
Superior, WI 54880

Bureau Director
Air Management Program
P.O. Box 7921
Madison, WI 53707-7921

To Wisconsin Department of Justice:

Director, Environmental Protection Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707

To Defendant Murphy:

President
Murphy Oil USA, Inc.
200 Peach Street
El Dorado, AR 71730

Refinery Manager
Murphy Oil USA, Inc.
2407 Stinson Avenue
Superior, WI 54880

XVII. COSTS OF SUIT

82. Each Party to this Consent Decree shall bear its own costs and attorneys' fees in this action. Should Murphy subsequently be determined by the Court to have violated any of the terms or conditions of this Consent Decree, it shall be liable to the United States for any costs or attorneys' fees incurred by the United States after initiation of the judicial process in connection with the judicial proceedings that led to the finding(s) of non-compliance with the Consent Decree, except that Murphy shall not be obligated to pay costs or fees associated only with claims for Consent Decree violations on which it prevailed.

XVIII. PUBLIC COMMENT

83. The Parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval of the Decree by the United States is subject to the

requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed Consent Decree is inappropriate, improper, or inadequate. Murphy and the State agree to entry of this Consent Decree without further consent, provided that Murphy reserves the right to withdraw its consent prior to such entry if the United States or the State modify any of the provisions contained in this Consent Decree.

XIX. MODIFICATION

84. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take effect unless signed by the Parties and approved by the Court. This Consent Decree contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation, or understanding. Prior Drafts of this Consent Decree shall not be used in any action involving the interpretation or enforcement of this Consent Decree, or in any other proceeding.

XX. TERMINATION

85. This Consent Decree shall be subject to termination upon motion by the United States or Murphy after Murphy satisfies the following requirements of this Consent Decree:

- a. Installation and implementation of pollution control technology equipment/measures as specified in this Consent Decree;
- b. Achieved compliance with the terms and conditions contained in this Consent Decree, unless any failure to comply was excused by the Plaintiffs or the Court;
- c. Payment of all civil and stipulated penalties and other monetary obligations (including completion of SEPs) due under the terms of this Consent Decree and no civil or stipulated penalties or other monetary obligations (including completion of SEPs) due hereunder are outstanding or owed to the United States or the State;
- d. Receipt of any permits required to implement the terms and conditions of this Consent Decree;
- e. Submitted to U.S. EPA and the State reports and documents required under this Consent Decree; and
- f. Provided certification to the United States and the State, in accordance with Paragraph 46, that it has complied with Subparagraphs 85.a. through 85.e. above.

86. Unless either the United States or the State objects in writing with specific reasons within ninety (90) Days of receipt of the report required by Paragraph 85 above, which must be certified as required by Paragraph 46, the Court may, upon Murphy's motion, order that this Consent Decree be terminated; provided, however,

that in no event shall the United States or the State be entitled to object to Murphy's certification based on a failure to submit a report or a deficiency in a report required under this Consent Decree more than two (2) years prior to the date of the certification, unless the United States or the State has previously advised Murphy of such failure or deficiency, and the failure or deficiency has not been cured. If either the United States or the State objects to Murphy's certification, then the matter shall be submitted to the Court for resolution under Section XIV (Retention of Jurisdiction/Dispute Resolution) of this Consent Decree. In such case, Murphy shall bear the burden of proving that this Consent Decree should be terminated.

XXI. AUTHORITY TO ENTER CONSENT DECREE

87. Each of the undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Consent Decree on behalf of such Parties, and to execute and to bind such Parties to this Consent Decree.

IT IS SO ORDERED.

Dated and entered this _____ day of _____, 2002.

BARBARA B. CRABB
Chief United States District Judge

For the United States:

GRANT C. JOHNSON
United States Attorney
Western District of Wisconsin

By:

Date

LESLIE K. HERJE
Assistant United States Attorney
660 W. Washington Ave., Suite 200
P.O. Box 1585
Madison, WI 53701-1585
(608) 264-5158

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

DRENAYE L. HOUSTON
Senior Trial Attorney
(202) 305-0260
ESPERANZA ANDERSON
KEVIN LYSKOWSKI
Trial Attorneys
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044

For the U.S. EPA Region 5:

Date

THOMAS V. SKINNER
Regional Administrator
U.S. EPA Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Date

JOSE C. DE LEON
Associate Regional Counsel
U.S. EPA Region 5
77 West Jackson Blvd.
Chicago, IL 60604

For the State of Wisconsin:

JAMES E. DOYLE
Attorney General

Date

SHARI EGGLESON
Assistant Attorney General
Department of Justice
P.O. Box 7857
Madison, Wisconsin 53707

For Defendant Murphy Oil USA, Inc.:

Date

FREDEREC C. GREEN
Senior Vice President
Manufacturing and Crude Oil Supply
Murphy Oil USA, Inc.
200 Peach Street
El Dorado, AR 71730

Date

HENRY HANDZEL, JR.
DeWitt, Ross & Stevens, S.C.
Two East Mifflin Street
Madison, WI 53703
(608) 252-9337

For Defendant Murphy Oil USA, Inc.:

Date

RICHARD H. MAYS
Environmental Legal Services
Cantrell Valley Plaza - Suite 200
2725 Cantrell Road
Little Rock, AR 72202

For the U.S. EPA Headquarters:

Date

SYLVIA K. LOWRANCE
Acting Assistant Administrator
Office of Enforcement and Compliance
Assurance
U.S. EPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460